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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,470	08/20/2003	Elizabeth Chelsea Teich		5957
4988	7590	10/20/2004		
			EXAMINER	
			BLAKE, CAROLYN T	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/644,470	TEICH ET AL.
	<b>Examiner</b> Carolyn T Blake	<b>Art Unit</b> 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) 1,3,4 and 6 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

### **DETAILED ACTION**

1. This action is in response to applicant's amendment received on September 23, 2004.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Specification***

3. The abstract of the disclosure is objected to because of minor informalities. The phrase "teich-musgnug bagel scoop appl" on line 18 should be deleted. This issue was raised in the first Office action. Correction is required in applicant's next response.
4. The disclosure is objected to because of informalities. On lines 24-25 of page 5, it is stated that the device has three functions. However, the applicant only explicitly states two functions (page 8). This issue was raised in the first Office action. Appropriate correction is required in applicant's next response.
5. The amendment filed September 23, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: on the last two lines of page 1 of the amendment, it is disclosed the scoop extends substantially perpendicular off of the longitudinal axis of the handle. This relationship is not disclosed as substantially perpendicular in the original specification. In addition, it cannot be determined and it is not shown in the drawings that the wall and handle are substantially perpendicular to one another.

Applicant is required to cancel the new matter in the reply to this Office action.

***Claim Objections***

6. Claims 1, 3, 4, and 6 are objected to because of informalities. Regarding claim 1, the phrase "said shallow elliptical spoon-shaped closed combined blade and scoop structure" on lines 9-10 lacks proper antecedent. It should be changed to -- said concave closed combined blade and scoop structure --.

Regarding claim 3, the phrase "said bagel scoop" on lines 20-21 lacks proper antecedent. It should be changed to -- said manually held scoop --.

Regarding claim 4, the claim fails to additionally limit the subject matter of the proceeding claim according to 37 CFR 1.75 (c). It is redundant.

Regarding claim 6, the phrase "said manually held bagel scoop" on line 7 lacks proper antecedent. It should be changed to -- said manually held scoop --.

These issues were raised in the first Office action. Appropriate corrections are required in applicant's next response.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

possession of the claimed invention. In line 10 of claim 8 and line 2 of claim 9, the scoop is disclosed as substantially perpendicular to the handle. This relationship is not disclosed as substantially perpendicular in the original specification. In addition, it cannot be determined and it is not shown in the drawings that the wall and handle are substantially perpendicular to one another.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether claim 9 is an independent or a dependent claim. The claim does not reference another claim, but it recites the limitations "the manually held scoop," "said closed bowl shaped wall," and "said handle" without proper antecedent.

#### ***Claim Rejections - 35 USC § 102***

9. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Green (3,121,951).

Regarding claim 1, Green discloses a manually held scoop as claimed (see FIG 1 and 3-5). The scoop includes a longitudinally extending handle (11) with a closed concave blade and scoop structure (13) at a distal end. Furthermore, the blade/scoop structure has a downward curvature, as best seen if the device were rotated (see *Figures* section at the end of this Office action). Again, if rotated, the combined blade and scoop structure has a downward facing closed recess (inside of 13) formed by a

closed bowl shaped wall (outside wall of 13) forming a round hollow head container (13). The structure is capable of scraping and removing excess dough rearward from an inner core of a bagel. Green also discloses the use of a shallow (col. 2, lines 51-52), elliptical (col. 2, line 55), spoon-shaped closed combined blade and scoop structure (col. 3, lines 21-22) that is capable of removing the core of a food product (col. 2, lines 56-57).

Regarding claim 2, the blade/scoop structure of the Green device is serrated with teeth (14) for scraping and scooping food product residue (col. 1, lines 67-68). These teeth are located at a leading edge of the blade/scoop structure (FIG 1a).

Regarding claim 3, the scoop of the Green device has an auxiliary scraper on the opposite end of the blade/scoop structure. The end of the handle (11) is capable of scraping.

Regarding claim 4, the blade/scoop structure of the Green device is shallow (col. 2, lines 51-52), elliptical (col. 2, line 55), and spoon-shaped (col. 3, lines 21-22).

Regarding claim 5, the blade/scoop structure of the Green device extends in a downward curvature from a longitudinally extending axis of the handle (FIG 1b).

Regarding claim 6, the Green device is capable of providing a resting area for the lateral portion of the user's palm when operating the scoop. Although Green does not specifically disclose the use of an auxiliary scraper for providing a palm rest, the auxiliary scraper (handle 11) would inherently rest on the user's palm while the device is in use.

Regarding claim 7, the Green device is capable of being used to scoop the core from any food product, including a sliced toroidal baked bagel. Green specifically discusses the use of removing the cores of fruit (col. 2, lines 56-57), but also discloses the scoop for assistance in eating "melon, tomato, potato, peach, etc." (col. 2, lines 48-49) or desserts (col. 2, line 72).

Regarding claims 8 and 9, the closed concave combined blade and scoop structure (13) extends downward and substantially perpendicular in a downward curvature from a longitudinally extending axis of the handle (11).

10. To the degree it can be argued that the blade and scoop structure of the Green device is not perpendicular to the handle, and if claim 9 is intended to be an independent claim, claim 9 is further rejected under 35 U.S.C. 102(b) as being clearly anticipated by Reeves et al (631,818). Reeves et al disclose a manually held scoop (FIG 1) where a closed bowl shaped wall (A) extends substantially perpendicular off of a longitudinal axis of the handle (D).

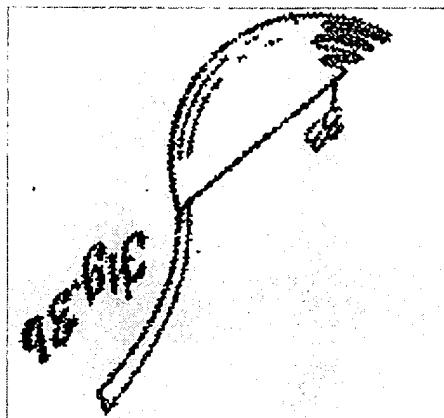
#### ***Claim Rejections - 35 USC § 103***

11. To the degree it can be argued that the blade and scoop structure of the Green device is not perpendicular to the handle, claims 8 and 9 is further rejected under 35 U.S.C. 103(a) as being unpatentable over Green as applied to claims 1-7 above, and further in view of Thomas (1,347,307). Thomas discloses a scoop (FIGS 1-4) comprising a closed concave scoop structure (A) extending downward substantially perpendicular in a downward curvature from a longitudinally extending axis of the handle (B). Section 4 of the handle (B) is considered substantially perpendicular to the

scoop (A). Sections 2, 3, and 5 are considered extension of the spoon (which claim 8 does not prohibit). The shape of the handle (B) provides a firm grip for the user (col.1, lines 88-94). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a handle substantially perpendicular to the scoop, as disclosed by Thomas, on the Green device in order to make the device easier to grip.

***Response to Remarks***

12. Applicant's remarks filed September 23, 2004 have been fully considered but are not persuasive. Applicant contends that the Green device would not be capable of scooping a bagel. This is incorrect; the references anticipate the claimed invention and the Green device would be capable of scooping a bagel. Applicant argues that the teeth disclosed by Green are too fine to go through the bagel dough. However, Green discloses several embodiments of teeth with various degrees of thickness. The teeth disclosed in FIGS 4 and 7 are very similar to those of applicant, and thus the Green teeth would perform equally well at scooping the bagel. In addition, applicant contends that the bowl of the Green device is upwardly facing, not downwardly facing. If the device were rotated at angle such as the one shown below, the scoop would be downward facing. Applicant further contends that the serrated teeth of the Green device are not suitable for scooping a delicate bagel wall. However, it is noted applicant's device includes serrated teeth (3b), and therefore, it would appear the Green device would be capable of scooping a bagel as well as applicant's device.



**Figure 3b** from US patent 3,121,951 to Green. Drawing rotated by the examiner.

### **Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cash (6,145,204), Sherblom (4,825,551), and Kuhlman (5,182,860) disclose a scoop structure perpendicular to the handle. Struver (20,400) discloses a device where the teeth are perpendicular to the handle.
14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T Blake whose telephone number is (703) 305-0390. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N Shoap can be reached on (703) 308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

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October 13, 2004

  
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